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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 708

JOE T. PATTERSON, *et al.*,

Petitioners,

—v.—

SAMUEL BAILEY, *et al.*,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Question Presented	1
Statement	2
ARGUMENT	
The Court of Appeals Decision That Injunctive Relief for Respondents and Their Class Was Necessary to Insure Effective Protection of Their Constitutional Right to Nonsegregated Travel Is Clearly Correct Under This Court's Mandate and Fifth Circuit Decisions	4
CONCLUSION	8

TABLE OF CASES

Baldwin v. Morgan, 251 F. 2d 780 (5th Cir. 1958)	6
Brown v. Board of Education, 347 U. S. 483 (1954)	5
Bryson v. Board of Trustees of Clarendon County, 311 F. 2d 107 (4th Cir. 1962)	6
Clark v. Thompson, 313 F. 2d 637 (5th Cir. 1963), cert. denied, 11 L. ed. 2d p. 312 (1964)	5
Dawley v. City of Norfolk, 260 F. 2d 647 (4th Cir. 1958)	6
Derrington v. Plummer, 240 F. 2d 922 (5th Cir. 1956), cert. denied sub nom. Casey v. Plummer, 353 U. S. 924 (1957)	5, 6
Douglas v. City of Jeannette, 319 U. S. 157 (1943)	7

PAGE

Evers v. Dwyer, 358 U. S. 202 (1958) 6

Hanes v. Shuttlesworth, 310 F. 2d 303 (5th Cir. 1962) 5, 6
Holmes v. City of Atlanta, 350 U. S. 879 (1955) 8

McCabe v. Atchison, Topeka & Santa Fe Ry. Co., 235 U. S. 151 (1914) 4, 5
Mitchell v. United States, 313 U. S. 80 4
Monroe v. Pape, 365 U. S. 167 (1961) 7, 8

Potts v. Flax, 313 F. 2d 284 (5th Cir. 1963) 5

Shuttlesworth v. Gaylord, 202 F. Supp. 59 (N. D. Ala. 1961), aff'd sub nom. Hanes v. Shuttlesworth, 310 F. 2d 303 (5th Cir. 1962) 5

Turner v. City of Memphis, 369 U. S. 350 (1962) 6

United States v. City of Jackson, 318 F. 2d 1 (5th Cir. May 13, 1963) 3
United States v. Oregon State Medical Society, 343 U. S. 326 (1952) 7
United States v. W. T. Grant, 345 U. S. 629 (1953) 7

OTHER AUTHORITIES

28 U. S. C. § 1343(3) 8

42 U. S. C. § 1983 8

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Opinions Below

The opinion of the Court of Appeals for the Fifth Circuit is printed in the appendix to the petition for certiorari and has been reported at 323 F. 2d 201. Earlier opinions by the District Court and by this Court are also printed in the appendix to the petition for certiorari.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented

Whether the court below correctly found that Negro respondents, forced by petitioners' laws and policies to use segregated public travel facilities, were entitled to injunctive relief against such laws and policies for themselves and for other Negroes similarly situated.

Statement

Respondents are Negro citizens of Mississippi who have experienced racial segregation while using public travel facilities in Mississippi, and seek injunctive relief against such discriminatory travel practices for themselves and for all Negroes similarly situated (R. Vol. I, 109, 121-141).

Petitioners, the City of Jackson, its mayor, commissioners and police chief, and the Jackson Municipal Airport Authority, seek review of the lower court's decision granting this relief as directed by the mandate of this Court.[1]

When this suit was filed in June 1961, racial segregation was required in the City of Jackson by an Ordinance enacted in 1956 (R. Vol. II, 348, 351-52), pursuant to which segregation of Negroes and whites was required in local terminals (R. Vol. II, 359), including the Jackson Airport where the Municipal Authority operated segregated restrooms, water fountains (R. Vol. I, 101, Vol. II, 232), and permitted the lessee of its restaurant to discriminate against Negro patrons (R. Vol. II, 210-212, 237).

The three-judge district court which originally heard the case having ruled 2-1 on November 17, 1961, to invoke the doctrine of federal abstention (199 F. Supp. 595), an appeal was taken to this Court which on February 26, 1962, in a *per curiam* opinion, vacated and remanded the case to the district court "for expeditious disposition of appellants' claims of right to unsegregated transportation service." 369 U. S. 31, 34.

On remand, the district judge declared the statutes and ordinance requiring segregated travel unconstitutional, held

[1] The other defendant appellees, including the State of Mississippi, the Illinois Central Railroad, Continental Southern Lines (Trailways), Southern Greyhound Lines and the Jackson City Lines did not join in the petition for writ of certiorari.

each of the respondents entitled to unsegregated transportation service, but held that the suit was not a proper class action, and that no injunction was required (R. Vol. IV, 740-41). Respondents tried three times to obtain an injunction, presenting on each occasion proof that petitioners were continuing to require segregation in travel facilities (R. Vol. V, 754-784, 793-812). The district court refused this relief (R. Vol. V, 848-49), and respondents appealed (R. Vol. V, 852).

The court of appeals found that respondents have standing to represent all Negroes similiarly situated, relying on this Court's decision in this case (369 U. S. 31), and its own precedent. It also found respondents entitled to injunctive relief against petitioners and the carriers. Petitioners having been enjoined in *United States* v. *City of Jackson*, 318 F. 2d 1 (5th Cir. 1963) from maintaining facial segregation in the carriers, or in or around their terminals by the maintenance of racial signs or otherwise, city officials were enjoined in this case from maintaining similar policies in the facilities of the Jackson Municipal Airport and the City Bus Lines. Petitioners were also enjoined from continuing to arrest, harass, intimidate, threaten, or coerce respondents or the members of their class in the exercise of their federally protected rights (Appendix, p. 95). On petitioners' motion, the court below stayed its mandate to permit the filing of their petition for a writ of certiorari (Appendix, p. 97).

ARGUMENT

The Court of Appeals Decision That Injunctive Relief for Respondents and Their Class Was Necessary to Insure Effective Protection of Their Constitutional Right to Nonsegregated Travel Is Clearly Correct Under This Court's Mandate and Fifth Circuit Decisions.

Petitioners seek review of the court of appeals decision which granted respondents the relief against racial segregation to which this Court has expressly found they were entitled.

After reviewing the record in this case, this Court held in its *per curiam* opinion, 369 U. S. 32, 33, that:

> "... as passengers using the segregated transportation facilities they are aggrieved parties and have standing to enforce their rights to nonsegregated treatment. Mitchell v. United States, 313 U. S. 80, 93, 85 L. ed. 1201, 1210, 61 S. Ct. 873; Evers v. Dwyer, 358 U. S. 202, 3 L. ed. 2d 222, 79 S. Ct. 178."

But, notwithstanding the remand of the case "for expeditious disposition, in light of this opinion, of the appellants' claims of right to unsegregated transportation service", the district court ruled that the action was not a class action, refused to grant any injunctive relief, and persisted in this refusal in the face of further proof that petitioners were continuing their outlawed policy.

Petitioners first contend that the lower court's finding that respondents were entitled to obtain relief on behalf of other Negro travellers creates a serious conflict with this Court's decision in *McCabe v. Atchison, T. & S. F. R. Co.*, 235 U. S. 151 (1914), and decisions of the courts of appeal.

No such conflict exists. This Court referred to the *McCabe* case, *supra*, in finding respondents lacked standing to enjoin criminal prosecutions for breach of the peace used by petitioners to enforce segregation policies. But, having noted that respondents sought relief "on behalf of themselves and others similarly situated, . . ." this Court expressly found that they had standing to enforce their rights to nonsegregated treatment in public travel facilities.

This finding, the court of appeals concluded, settled the division in the Fifth Circuit recently created by the decision in *Clark* v. *Thompson*, 313 F. 2d 637 (5th Cir., 1963), cert. denied, 11 L. ed. 2d 312 (1964), which appeared to depart from the generally accepted rule in civil rights cases that persons in the position of respondents have standing to represent not only themselves but the class of all Negroes similarly situated. Fed. Rule Civ. Proc. 23(a)(3). *Brown* v. *Board of Education*, 347 U. S. 483 (1954); *Shuttlesworth* v. *Gaylord*, 202 F. Supp. 59, 62 (N. D. Ala. 1961), aff'd *sub nom. Hanes* v. *Shuttlesworth*, 310 F. 2d 303 (5th Cir. 1962); *Derrington* v. *Plummer*, 240 F. 2d 922 (5th Cir. 1956), cert. denied, *sub nom. Casey* v. *Plummer*, 353 U. S. 924 (1957).

But the court, applying the reasoning in one of its school desegregation cases, *Potts* v. *Flax*, 313 F. 2d 284 (5th Cir. 1963), found it unnecessary to determine the class action issue, because respondents seek the right to use desegregated travel facilities, i.e., facilities open to all without regard to race, and not merely the right to use those segregated facilities set aside for "whites". Thus, said the court below: "the very nature of the right appellants seek to vindicate requires that the decree run to the benefit not only of appellants but also for all persons similarly situated."

This decision is not only clearly correct but also necessary if respondents and other civil rights plaintiffs are to obtain more than pyrrhic victories in return for their efforts to end state-sanctioned racial segregation. The Fourth Circuit agrees. *Brunson* v. *Board of Trustees of Clarendon County*, 311 F. 2d 107 (4th Cir. 1962). That Circuit's decision in *Dawley* v. *City of Norfolk*, 260 F. 2d 647 (4th Cir. 1958), cited by petitioners, is not in point since there the court found that the theory of the plaintiff, a Negro attorney, that racial designations on State courthouse restrooms influenced potential clients in a manner detrimental to his economic interests should be brought in the state court.

Nor is it possible to distinguish *Evers* v. *Dwyer*, 358 U. S. 202 (1958); *Turner* v. *City of Memphis*, 369 U. S. 350 (1962) and Fifth Circuit decisions in *Hanes* v. *Shuttlesworth*, *supra*, and *Derrington* v. *Plummer*, *supra*, on the ground that the plaintiffs in each had requested and been refused desegregated accommodations. Respondents had each traveled on public conveyances and been required to submit to the segregation policy required by petitioners. One of them had written letters complaining about such policies (R. Vol. I, 96-99). No more was required of them. *Evers* v. *Dwyers*, *supra*; *Baldwin* v. *Morgan*, 251 F. 2d 780, 787 (5th Cir. 1958).

The decision below is not novel, as petitioners contend. It establishes no new right under the Fourteenth Amendment, and the many decisions on standing cited by petitioners cannot shake the clearly correct holding of this Court and the court below.

Petitioners also complain that there was no basis to support the lower court in enjoining them from enforcing laws and policies requiring segregation in travel facilities. They refer to many cases reflecting judicial reluctance to grant

injunctions because of mere apprehension, suspicion or fear of need, and to the trial court's belief that City officials would conform to the court's rulings without an injunction.

But the injunctive relief ordered by the court below, after finding that petitioners had disregarded several federal court decisions invalidating their segregation practices and policies, and that the State of Mississippi has not altered its "steel-hard, inflexible, undeviating, official policy of segregation", is in line with the decisions of this Court. *United States v. W. T. Grant*, 345 U. S. 629, 632 (1953); *United States v. Oregon State Medical Society*, 343 U. S. 326, 333 (1952).

Petitioners assert that the court of appeals could not enjoin the enforcement of their breach of the peace statutes (Appendix, p. 105), relying primarily on *Douglas v. Jeannette*, 319 U. S. 157 (1943), which, of course, concerned an effort to enjoin pending state prosecutions that this Court found were undertaken "lawfully and in good faith", 319 U. S. at 164, and secondarily on the argument (Petition, p. 27) that any person arrested under these statutes will have their day in court and will have, if they desire, an opportunity to appeal to this Court. Whatever solace this promise may bring to the hundreds of "Freedom Riders" whose convictions for Breach of Peace have been on appeal in Mississippi courts since the Summer of 1961, it cannot obscure the fact that here, respondents, having shown that these statutes have consistently been used by petitioners to arrest persons seeking to use travel facilities on a desegregated basis, did bring their case to this Court, and have now received appropriate relief in accordance with this Court's mandate.

Finally, the argument, based on a footnote in *Monroe v. Pape*, 365 U. S. 167, 191 (1961), that the City of Jackson and the Municipal Airport Authority are public bodies,

and neither is a "person" under 28 U. S. C., (1343(3) and 42 U. S. C., 1983, is not new. The identical position was taken by petitioners in a motion to dismiss discussed by Judge Rives in his dissent from the three-judge court decision in this case. (Appendix p. 38). Respondents submit that Judge Rives' position that this Court did not intend in *Monroe v. Pape* to overrule prior cases indicating that a municipal corporation may be sued for equitable relief, as in *Holmes v. City of Atlanta*, 350 U. S. 879 (1955) is correct.

In summary, petitioners raise no novel issues, reveal no conflict in decisions, and seek review of a lower court decision that complies with the mandate of this Court, accords with other applicable rulings, and provides respondents with relief indispensible to the exercise of their right to use public travel facilities in Mississippi on a desegregated basis.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

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